IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE:	In Proceedings Under Chapter 7
RICKY LAMB	
Debtor(s).	Case No. 03-40597
CYNTHIA A. HAGAN, TRUSTEE,	
Plaintiff(s),	
v.	Adv. No. 03-4105
CITIZENS STATE BANK,	
Defendant(s).	

OPINION

This matter is before the Court on the trustee's complaint to avoid liens held by Citizen's State Bank ("Bank") on the debtor's vehicles. The trustee asserts that the Bank's liens were not perfected as required under Illinois law and are, therefore, subject to avoidance pursuant to the trustee's "strong arm" powers. See 11 U.S.C. § 544.[1] The Bank responds that, under the facts of this case, the debtor never acquired an ownership interest in the subject vehicles, so that the vehicles failed to become property of the debtor's estate. Accordingly, the Bank maintains, the trustee may not avoid its liens, whether

[1] Section 544 gives the trustee the powers of a hypothetical lien creditor to avoid any unperfected security interests in the debtor's property.

perfected or not.

The facts are undisputed. In July 2002, debtor Ricky Lamb purchased a 1993 Ford F-95 truck and a 1990 East Dump Trailer from Buchta Leasing, Inc. ("Buchta"). Debtor and his non-debtor spouse executed promissory notes to the Bank and granted the Bank a security interest in the truck and trailer. Repayment of both notes was guaranteed by Buchta.

Elmer Buchta, president of Buchta, signed the Indiana certificates of title to both vehicles as "seller" and typed in the names of debtor and his spouse as "purchasers" and the Bank as "lienholder." Buchta gave the vehicle titles to the debtor "with instructions to take the titles to the applicable license branch and to have title transferred." (Parties' Jt. Stip. of Facts, Doc. 10, filed Jan. 8, 2004). However, the debtor failed to take the certificates of title to either the Indiana Bureau of Motor Vehicles or the Illinois Secretary of State to have new titles issued.

In July 2002, the debtor began driving the truck and trailer as an owner-operator for Buchta. Pursuant to the parties' agreement, Buchta leased the vehicles from the debtor. From July 2002 to January 2003, payments were made on the debtor's promissory notes to the Bank through deductions from lease payments due the debtor from Buchta.

In February 2003, the debtor returned the truck and trailer to Buchta and requested that Buchta perform certain service or repair on them. Buchta refused to perform the requested service on the vehicles without payment by the debtor. The debtor was unable to obtain a loan from the Bank for such service or repair without an additional guaranty from Buchta, which Buchta refused to give.

The debtor thereafter advised Buchta and the Bank that they could keep both vehicles, and the debtor left the truck and trailer at Buchta's facility in Indiana, where the Bank also stores repossessed vehicles. On March 11, 2003, the debtor filed his Chapter 7 petition in bankruptcy.

In defending against the trustee's complaint to avoid its liens as unperfected, the Bank makes two arguments. First, the Bank asserts that the vehicles at issue are not property of the debtor's estate because the debtor failed to acquire ownership of them. Specifically, the Bank points out that the debtor did not obtain record ownership of the vehicles by having new certificates of title issued in his name. In addition, the Bank maintains, the debtor failed to provide consideration for the vehicles because he made no down payment and supplied no trade-in vehicle, and payments on the debtor's notes to the Bank were made, not by the debtor, but by Buchta from the lease payments

due on the vehicles.

The Bank seeks to distinguish this case on its facts from an earlier decision by this Court, In re Church, 206 B.R. 180 (Bankr. S.D. Ill. 1997), in which the Court held that the debtor acquired ownership of the vehicle in question despite failing to have title transferred into her name because she provided actual consideration and remained in possession of the vehicle. See id., at 185. While the present case differs in some respects from Church, the Court finds no basis upon which to reach a contrary result.

As stated in Church, whether ownership of a vehicle has been transferred from one party to another does not depend upon record title but is a matter of the parties' intent. See id., at 184-85. In essence, "ownership [of a vehicle] passes to the purchaser at the time of sale . . . , and vesting of title is not deferred until issuance of a new certificate of title, which is merely evidence of the title previously acquired." Church, at 184.

In this case, the stipulated facts show that Buchta signed and delivered the certificates of title to the debtor in July 2002, at which time the debtor took possession of the vehicles and began driving them as an "owner-operator" for Buchta. Although the debtor failed to obtain new certificates of title

from the appropriate authority, this fact did not preclude the passage of title from Buchta to the debtor, as there were other indicia of the parties' intent that title should pass. Specifically, Buchta assigned and delivered the existing titles to the debtor with the designation of Buchta as "seller" and the debtor as "purchaser." Further, while the parties' sales negotiations did not require the debtor to make a down payment or supply a trade-in vehicle, the debtor clearly provided consideration for the vehicles, as Buchta deducted payments on the vehicles from lease payments earned by the debtor as owner-operator for Buchta. Accordingly, contrary to the Bank's contention, this case cannot be distinguished from Church on its facts. For this reason, the Court rejects the Bank's argument that the trustee's action must fail because the debtor never acquired ownership of the vehicles in question.

The Bank's second argument is likewise without merit. The Bank asserts that even though it had not perfected its liens on the debtor's vehicles by having the liens noted on the certificates of title, the Bank's liens were nevertheless perfected because the Bank had acquired possession of the vehicles at the time of bankruptcy. The Bank has cited no case, under either Indiana or Illinois law, to indicate that a secured creditor's pre-petition repossession of collateral is sufficient

to render the creditor perfected as against the bankruptcy trustee. The only case authority cited by the Bank, In re Boorgaard, 89 B.R. 397 (Bankr. D. Del. 1988), is clearly inapposite in that it is premised on Delaware law and involved a preference action by the trustee to recover property repossesssed by the creditor prior to bankruptcy. See id., at 398. Boorgaard is legally and factually dissimilar and is not persuasive in this case. For the reasons stated, the Court finds for the trustee and against the Bank on the trustee's complaint to avoid the Bank's liens pursuant to § 544.

SEE WRITTEN ORDER.

ENTERED: April 8, 2004

/s/ Kenneth J. Meyers
UNITED STATES BANKRUPTCY JUDGE